THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.691 OF 2002

DATED: 13th DECEMBER, 2005

Between

P.Jayaram Naidu, S/o Ayyaswamy Naidu, Flat No.9,

SBI colony, Chittoor, Chittoor District.

… Petitioner

and

The Presiding Officer, State Transport Appellate Tribunal,

Andhra Pradesh, Hyderabad, and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.691 OF 2002

ORDER:

The petitioner filed the present writ petition praying for a writ in the nature of writ of certiorari to call for the records connected with the order of the first respondent dated 10.07.2001 in A.P.No.25 of 2001 confirming the order of the second respondent dated 21.01.2001 and quash the same. A consequential direction is also sought directing the second respondent to issue temporary permit under Section 104 of Motor Vehicles Act, 1988 (the Act, for brevity) to the petitioner.

The fact of the matter is not much in dispute. The bus route Puttur in Chittoor District to Krishnagiri in Tamil Nadu via Kuppam and Chittoor is Inter State route on payment of double point tax. An Inter State agreement was entered into as per G.O.Rt.No.600, dated 08.06.1994, enabling the State of A.P., to run two buses with two trips and State of Tamil Nadu to run two buses with two trips. Andhra Pradesh State Road Transport Corporation (hereafter called, APSRTC) obtained only one permit and was running only one bus. The petitioner applied to the second respondent for grant of temporary permit on the said Inter State route as there is a vacancy for one more bus. Such a temporary permit was granted in favour of the petitioner on 05.07.1999 to be valid from 06.07.1999 to 05.11.1999. After expiry of the said permit, the second respondent granted another permit valid from 06.11.1999 to 05.03.2000. Subsequently also the petitioner was granted temporary permits valid for four months on two occasions. After expiry of the temporary permit, the petitioner sought another temporary permit beyond 06.11.2000. This time, by proceedings dated 24.01.2001, the second respondent rejected the application of the petitioner for temporary permit to ply on the Inter State route Puttur to Krishnagiri. The petitioner approached the first respondent by way of appeal being A.P.No.25 of 2001. By order dated 10.07.2001, the same was dismissed. Aggrieved by which, the petitioner filed the present writ petition.

The petitioner contends that when temporary permits were granted for a period of four months every time from 06.07.1999 till 06.11.2000, the second respondent erred in rejecting the application for temporary permit. The petitioner also contends that when the State Transport Undertaking did not apply for the permit for the second bus, there is no prohibition for grant of temporary permit to a private operator.

The third respondent filed counter affidavit opposing the writ petition. The contents of the same in brief may be noticed. Inter State route Puttur to Krishnagiri is 243 kilometers out of which 212 kilometers lies in Andhra Pradesh and rest of the route of 31 kilometers is in State of Tamil Nadu. The route finds place in the Third Supplemental Inter State Agreement between the two States to the exclusive operation of Andhra Pradesh at Sl.No.83 in Annexure-I. There is a provision for two buses with two round trips and APSRTC obtained one permit and operating one bus with two single trips per day. The average occupancy in the said bus is 65% and there is no need to introduce second bus in view of less traffic. Therefore, the petitioner is not entitled to claim temporary permit to ply on the above route. The petitioner failed to satisfy the conditions enumerated under Section 87 of the Act for

grant of temporary permit and the scheme of Nationalisation prevails over Inter State agreement. The proposed Inter State route Puttur to Krishnagiri overlaps notified schemes approved in G.O.Ms.No.1160, dated 07.12.1976, (Kuppam to Palamaner) to an extent of 79.0 kilometers; G.O.Ms.No.41, dated 05.01.1977, (Kuppam to Chittoor) to an extent of 119.0 kilometers; G.O.Ms.No.1159, dated 07.12.1976, (Puttur to Chittoor) to an extent of 67.0 kilometers and G.O.Ms.No.274, dated 28.06.1990, (Kuppam to Palamaner) to an extent of 79.0 kilometers. All these notified schemes prohibit grant of future permits on the proposed Inter State route and if any temporary permit is granted, it would violate Section 104 of the Act and also contrary to the conditions attached to the approved schemes. It is also urged by the third respondent that grant of consecutive temporary permit would amount to abuse of power.

The learned counsel for the petitioner, Sri V.Narasimha Reddy, submits that when State Undertaking failed to apply for second permit to run the second bus, nothing prevents the second respondent to grant temporary permit especially when there is a vacancy for which APSRTC has not applied. Strong reliance is placed on the decision of the Supreme Court on **Ajantha Transports v T.V.K.Transports**, **Pravin Ansari v S.T.A.T., Lucknow**; **M.Selvaraj v the Regional Transport Authority** and **Jagdip Singh v Jagir Chand**. Secondly, it is urged that two buses can be operated on the Inter State route and therefore it is arbitrary to deny a permit to the petitioner especially when the petitioner was granted such temporary permits on double tax payment to Andhra Pradesh and Tamil Nadu. **Per contra**, the learned standing counsel for APSRTC, Sri K.Srinivasa Rao, submits that the petitioner submitted application, dated 11.10.2000, for grant of temporary permit beyond 06.11.2000. Even if such permit had been granted, it would have been valid for a period only for four months and therefore nothing survives in the writ petition. Secondly, he would urge that the draft Inter State Agreement between Andhra Pradesh and Tamil Nadu was revised subsequently superceding the approved draft agreement in G.O.Rt.No.600, dated 08.06.1994, by reason of the orders of the G.O.Rt.No.319, dated 05.05.2004, which was again revised by orders in G.O.Rt.No.1025, dated 08.10.2005 permitting the signatory States to ply only one bus on the Inter State route and therefore at present it is not permissible to grant temporary permit. Thirdly, the learned standing counsel would contend that mere vacancy for one more bus cannot be sole criteria to claim temporary permit and it is incumbent on the part of the competent authority to assess the need for such permit. When the APSRTC itself is unable to achieve more than 65% of occupancy, it was proper for the second respondent to reject the temporary permit applied for by the petitioner.

Whether the Motor Vehicles Act permits grant of temporary permit on the Inter State route even where there is overlapping of the said Inter State route by reason of the approved schemes; and whether such temporary permit can be granted merely on the basis of available vacancy ignoring the need factor, are the questions which need not be gone into in this writ petition. As rightly pointed out, even if the present writ petition had been allowed in 2002 directing the authorities to grant temporary permit to the petitioner on the Inter State route, the same would have been valid for a period of four months from 06.11.2000 and nothing would have survived in the writ

petition. Secondly, a perusal of the notification vide G.O.Rt.No.319, dated 05.05.2004, which superceded the draft notification in G.O.Rt.No.600, dated 08.06.1994; and the notification vide G.O.Rt.No.1025, dated 08.10.2005, which superceded G.O.Rt.No.319, dated 05.05.2004, would support the submission that on the Inter State route, i.e., Puttur to Krishnagiri via Kuppam and Chittoor, only one bus with one round trip is permitted. The APSRTC admittedly running one bus with one round trip and therefore nobody can seek any additional permit on the same route. If such a direction is issued, it would certainly be in violation of Section 104 of the Act and therefore this Court is not inclined to issue any Mandamus, which would be contrary to law. It is well settled that an application for a temporary permit has to be considered as per the law prevailing on the date of grant of permit and if the petitioner's application is considered today, he would not be entitled for grant of such temporary permit (see **Kasireddy v State of A.P.,**).

In the result, for the above reasons, the writ petition is dismissed. No order as to costs.

_____

(V.V.S.RAO,J)

.12.2005.

pln